

### REMARKS

Applicants appreciate the very detailed examination evidenced by the Official Action mailed October 4, 2005 (hereinafter "the Official Action"). Applicants also appreciate the indicated allowability of Claims 36 and 50. *Official Action, page 7*. In response, Claims 36 and 50 have been amended to be in independent form as suggested by the Examiner.

With regard to the remaining claims, Applicants respectfully submit that the amendments to the present application obviate all of the rejections in the Official Action. Briefly:

1. Applicants have submitted a Petition to Accept an Unintentionally Delayed Claim for Priority under 35 CFR 1.78(a)(3), concurrently herewith;
2. The claim for priority in the specification has been corrected as suggested by the Examiner, thereby removing Scarantino as a reference, thereby placing Claims 27-32, 35, 37-46, 49, 51-56, 58-63, and 66-71 (as amended herein) in condition for allowance;
3. Claims 26 and 57 have been cancelled, thereby obviating the rejections of these claims over Dodgson and Gross.
4. Claims 32 and 63 have been amended to depend from Claims 28 and 59 respectively, thereby obviating the rejection of these claims over Gross and Dodgson.
5. The rejection of Claims 33, 34, 47, 48, and 64-65 has been obviated as these claims depend from Claims 28, 41, and 59, which Applicants submit is allowable in view of the removal of Scarantino as a reference.

Accordingly, Applicants respectfully request the withdrawal of all rejections and the allowance of all claims for at least the reasons described herein.

### **Applicants affirm the election**

Applicants affirm the election to prosecute the invention of Group I, Claims 26-71 made by telephone on September 27, 2005. Accordingly, Claims 72-81 have been withdrawn as required by the Examiner.

**The claim for Priority has been corrected as suggested.**

Applicants' claim for priority stands objected to over formalities of reciting relationships between the applications listed. In response, Applicants have amended the specification as suggested by the Examiner. In particular, Applicants have amended the specification's claim for priority to read:

This application is a national stage Continuation-in-Part Application of International PCT Application Serial No. PCT/US00/08310 filed March 29, 2000, which is a PCT Application based on and claiming priority from U.S. Patent Application No. 09/407,359 filed September 29, 1999, now U.S. Patent No. 6,402,689. The international application was published in English under PCT Article 21(2). This application is also a Continuation-in-Part of and claims priority to U.S. Patent Application No. 10/078,310 filed February 18, 2002 entitled *Methods, Systems, and Associated Implantable Devices for Dynamic Monitoring of Physiological and Biological Properties of Tumors*, which is a divisional application of U.S. Patent Application No. 09/407,359 filed September 29, 1999, now U.S. Patent No. 6,402,689, which claims priority from U.S. Provisional Patent Application No. 60/102,447 filed September 30, 1998. The contents of all of these applications are hereby incorporated by reference as if recited in full herein

As shown above, Applicants have corrected the claim for priority to comply with the formal requirements for recitation of relationships between the applications. Applicants have concurrently provided herewith, a Petition to Accept an Unintentionally Delayed Claim for Priority under 37 CFR 1.78(a)(3). Accordingly, Applicants respectfully request acknowledgment of Applicants' proper claim for priority as amended.

**Many Claims are Patentable Given the Removal of Scarantino as a Reference.**

Claims 26-32, 35, 37-46, 49, 51-63, and 66-71 stand rejected under 35 U.S.C. § 102 over U.S. Patent No. 6,402,689 to Scarantino et al. ("Scarantino"). *Official Action, page 5*. As described above, Applicants have corrected the claim for priority in the present application, thereby removing Scarantino as a reference under Section 102(e) as suggested by the Examiner. Accordingly, Applicants are entitled to claim subject matter disclosed in either Scarantino or the present application. Accordingly,

Applicants respectfully request the withdrawal of the rejections of Claims 26-32, 35, 37-46, 49, 51-63, and 66-71, as many of these claims are not rejected over any other references. For example, Claims 28, 41, and 59, are patentable in view of the removal of Scarantino.

**The Rejection of Claims 26, 57, and 58 over Dodgson Has Been Obviated by Amendment.**

Claims 26, 57, and 58 stand rejected under 35 U.S.C. § 102 over U.S. Patent No. 6,558, 519 to Dodgson et al. ("Dodgson"). *Official Action, page 4*. As shown by the above amendments, Claims 26 and 57 have been cancelled, whereas Claim 58 has been amended to depend from amended Claim 59. Accordingly, the rejection of these claims based on Dodgson has been obviated by amendment.

**The Rejections of Claims 26, 27, 57, and 58 Under Section 102 Over Gross Have Been Obviated by Amendment.**

Claims 26, 27, 57, and 58 stand rejected under 35 U.S.C. § 102 over PCT Publication No. 98/58250 to Gross ("Gross"). *Official Action, page 4*. As described above, independent Claims 26 and 57 have been cancelled and, further, Claims 27 and 58 have been amended to depend from amended independent Claims 28 and 59, respectively. Accordingly, the rejections of Claims 26, 27, 57, and 58 over Gross have been obviated by amendment.

**The Rejections of Claims 32 and 63 Have Been Obviated by Amendment.**

Claims 32 and 63 stand rejected under Section 103 both over Gross and Dodgson. *Official Action, page 7*. As shown by the Amendments above, Claims 32 and 63 have been amended to depend from amended independent Claim 28 and 59 respectively, thereby placing these claims in condition for allowance.

**The Rejection of Claims 33, 34, 47, 48, and 64-65 Has Been Overcome by the Removal of Scarantino as a Reference.**

---

As described above, Applicants have amended Applicants' claim for priority as suggested by the Examiner, and therefore, Scarantino is not available as a reference under Sections 102/103. Accordingly, the rejection of these claims over Scarantino has been obviated by the removal of Scarantino.

**CONCLUSION**

Applicants have removed Scarantino as a reference, thereby overcoming the rejection of many of the claims including Claims 28 and 59 which have been amended to be in independent form. As these claims are not rejected over any other references, Applicants respectfully submit that these claims are now in condition for allowance which is respectfully requested. Furthermore, Claims 27, 29-35, and 37 depend from amended independent Claim 28. Accordingly, these dependent claims are also in condition for allowance.

Applicants further submit that Claim 59 is also not rejected over any other references, and therefore, has been amended to be in independent form, thereby placing Claim 59 in condition for allowance which is respectfully requested. Furthermore, dependent Claims 58 and 60-71 depend from amended independent Claim 59 and therefore are also in condition for allowance.

In view of the above amendments to the specification and claims, Applicants have overcome all of the outstanding rejections. Accordingly, Applicants respectfully request the withdrawal of all rejections and the allowance of all claims in due course. If any informal matters arise, the Examiner is encouraged to contact the undersigned by telephone at (919) 854-1400.

Respectfully submitted,

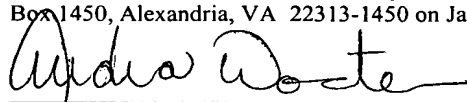
  
Robert N. Crouse  
Registration No. 44,635

In re: Scarantino et. al.  
Serial No.: 10/089,483  
Filed: September 17, 2002  
Page 18

**USPTO Customer No. 20792**  
Myers Bigel Sibley & Sajovec  
Post Office Box 37428  
Raleigh, North Carolina 27627  
Telephone: 919/854-1400  
Facsimile: 919/854-1401

**Certificate of Mailing under 37 CFR 1.8 (or 1.10)**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 4, 2006.

  
\_\_\_\_\_  
Audra Wooten